

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH FLOWERS,

Petitioner,

v.

CASE NO. 2:06-CV-10726
HONORABLE AVERN COHN

JAN TROMBLEY,

Respondent.

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ORDER DISMISSING CASE AS DUPLICATIVE

This is a habeas case under 28 U.S.C. § 2254. Joseph Flowers (“Petitioner”), a state prisoner, was convicted of second-degree murder, assault with intent to do great bodily harm less than murder, and felony firearm following a bench trial in the Wayne County Circuit Court in 1999. He was sentenced to concurrent terms of 20 to 40 years imprisonment and a consecutive term of two years imprisonment. Petitioner raises claims concerning the sufficiency of the evidence, the accuracy of information at sentencing, the validity of his jury trial waiver, cumulative error, prosecutorial overcharging, the trial court’s understanding of the law, the prosecution’s failure to produce a witness, the grant of immunity to a witness, and the effectiveness of trial and appellate counsel.

Petitioner has filed an identical habeas action with this Court, which is currently pending before the Honorable Gerald E. Rosen. *See Flowers v. Trombley*, No. 05-

73539. Accordingly, the instant action must be dismissed as duplicative.¹ A suit is duplicative, and subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. *See, e.g., Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999) (internal citations omitted). Petitioner's current habeas petition is duplicative of his pending first habeas petition because the claims are the same and seek the same relief. *Id.* Because Petitioner challenges the same convictions in both petitions and raises the same claims, the Court will dismiss this second petition as duplicative. *See Harrington v. Stegall*, 2002 WL 373113, *2 (E.D. Mich. Feb. 28, 2002)

Accordingly, the petition is **DISMISSED WITHOUT PREJUDICE** to the petition filed as Case No. 05-73539.

SO ORDERED.

Dated: March 17, 2006

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 17, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager
(313) 234-5160

¹The duplicate filing may have been the result of a clerical error by the Clerk during the intake process and was likely not due to any improper action on Petitioner's part.